



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No: 210325-0071]**

**RTID 0648-XC678**

### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2023**

#### **Management Area 3 Possession Limit Adjustment**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; possession limit adjustment.

**SUMMARY:** NMFS is implementing a 2,000-lb (907.2-kg) possession limit for Atlantic herring for Management Area 3. This is required because NMFS projects that herring catch from Area 3 will reach 98 percent of the Area's sub-annual catch limit before the end of the fishing year. This action is intended to prevent overharvest of herring in Area 3, which would result in additional catch limit reductions in a subsequent year.

**DATES:** Effective 00:01 hr local time, January 13, 2023, through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Maria Fenton, Fishery Management Specialist, (978) 281-9196.

#### **SUPPLEMENTARY INFORMATION:**

The Regional Administrator of the Greater Atlantic Regional Office monitors herring fishery catch in each Management Area based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(i)(B)(2) require that NMFS implement a 2,000-lb (907.2-kg) possession limit for herring for Area 3 beginning on the date that catch is projected to reach 98 percent of the sub-annual catch limit (ACL) for that area.

Based on vessel reports, dealer reports, and other available information, the Regional Administrator projects that the herring fleet will have caught 98 percent of the Area 3 sub-ACL by January 10, 2023. Therefore, effective 00:01 hr local time January 13, 2023, through December 31, 2023, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb (907.2 kg) of herring per trip or more than once per calendar day in or from Area 3.

Vessels that enter port before 00:01 local time on January 13, 2023, may land and sell more than 2,000 lb (907.2 kg) of herring from Area 3 from that trip, provided that catch is landed in accordance with state management measures. Vessels may transit or land in Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided that: The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

Also effective 00:01 hr local time, January 13, 2023, through 24:00 hr local time, December 31, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from Area 3, unless it is from a vessel that enters port before 00:01 local time on January 13, 2023 and catch is landed in accordance with state management measures.

This 2,000-lb possession limit bypasses the 40,000-lb (18,143.7-kg) possession limit that is required when NMFS projects that 90 percent of the sub-ACL will be caught. Regulations at § 648.201(a)(1)(i)(B)(I) require NMFS to implement a 40,000-lb (18,143.7-kg) possession limit for herring for Area 3 beginning on the date that catch is projected to reach 90 percent of the herring sub-ACL for that area. Based on dealer reports, state data, and other available information, we estimate that 90 percent of the

Area 3 sub-ACL was harvested by January 9, 2023. However, due to the low 2023 sub-ACLs, the high volume nature of this fishery, and the progress of catch this fishing year, we project that 98 percent of the sub-ACL in Area 3 will be harvested by January 10, 2023. Implementing the 40,000-lb limit before the 2,000-lb limit is impracticable due to the small amount of time between the 90-percent and 98 percent catch projection dates and substantially increases the risk of exceeding the sub-ACL due to the low amount of available catch remaining under the sub-ACL. The limited time for the two different notices is logistically difficult and could result in substantial confusion. The limited time between projected dates and the relatively low available catch could also encourage significantly increased fishing effort if we first implemented the 40,000-lb limit in Area 3. This increase could require a quicker implementation of the 2,000 lb limit than possible. To minimize the chance of a potential sub-ACL overage occurring and to avoid incentivizing potential changes in fishing behavior that could contribute to an overage, NMFS is bypassing the 40,000-lb (18,143.7-kg) possession limit and implementing the 2,000-lb (907.2-kg) possession limit in Area 3.

The projected catch is 98 percent of the current Area 3 sub-ACL. The current Area 3 sub-ACL is equal to the 2023 Area 3 sub-ACL that was previously implemented through Framework Adjustment 8 to the Atlantic Herring Fishery Management Plan (FMP), which will remain in place until it is revised through the specification process. NMFS is working on implementing updated 2023 specifications as soon as practicable consistent with the specifications process.

### **Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public

interest, and impracticable. Ample prior notice and opportunity for public comment on this action has been provided for the required implementation of this action. The requirement to implement this possession limit was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives. Further, the regulations requiring NMFS to implement this possession limit also were subject to public notice and opportunity to comment when they were first adopted in 2021. Herring fishing industry participants monitor catch closely and anticipate potential possession limit adjustments as catch totals approach Area sub-ACLs. The regulation provides NMFS with no discretion and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2023 herring fishing year began on January 1, 2023. Data indicating that the herring fleet will have landed at least 98 percent of the 2023 sub-ACL allocated to Area 3 only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the sub-ACL quickly, especially in this fishing year where annual catch limits are unusually low. If implementation of this possession limit adjustment is delayed to solicit prior public comment, the 2023 sub-ACL for Area 3 will likely be exceeded; thereby undermining the conservation objectives of the Herring FMP. If sub-ACLs are exceeded, the excess must be deducted from a future sub-ACL and would reduce future fishing opportunities. The public expects these actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C 553(d)(3).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 11, 2023.

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Jennifer M. Wallace,

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National Marine Fisheries Service.

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